

(vi) Implementing and maintaining a process for providers and suppliers identified in a report to review the report prior to publication and providing a timely response to provider and supplier inquiries regarding requests for data, error correction, and appeals.

(vii) Establishing, maintaining, and monitoring a rigorous data privacy and security program, including disclosing to CMS any inappropriate disclosures of beneficiary identifiable information, violations of applicable federal and State privacy and security laws and regulations for the preceding 10-year period (or, if the applicant has not been in existence for 10 years, the length of time the applicant has been an organization), and any corrective actions taken to address the issues.

(viii) Accurately preparing performance reports on providers and suppliers and making performance report information available to the public in aggregate form, that is, at the provider or supplier level.

(2) Expertise in combining Medicare claims data with claims data from other sources, including demonstrating to the Secretary's satisfaction that the claims data from other sources that it intends to combine with the Medicare data received under this subpart address the methodological concerns regarding sample size and reliability that have been expressed by stakeholders regarding the calculation of performance measures from a single payer source.

(3) Expertise in establishing, documenting and implementing rigorous data privacy and security policies including enforcement mechanisms.

(b) *Source of expertise and experience:* An applicant may demonstrate expertise and experience in any or all of the areas described in paragraph (a) of this section through one of the following:

(1) Activities it has conducted directly through its own staff.

(2) Contracts with other entities if the applicant is the lead entity and includes documentation in its application of the contractual arrangements that exist between it and any other entity whose expertise and experience is relied upon in submitting the application.

**§ 401.707 Operating and governance requirements for qualified entities.**

A qualified entity must meet the following operating and governance requirements:

(a) Submit to CMS a list of all measures it intends to calculate and report, the geographic areas it intends to serve, and the methods of creating and disseminating reports. This list must include the following information, as applicable and appropriate to the proposed use:

(1) Name of the measure, and whether it is a standard or alternative measure.

(2) Name of the measure developer/owner.

(3) If it is an alternative measure, measure specifications, including numerator and denominator.

(4) The rationale for selecting each measure, including the relationship to existing measurement efforts and the relevancy to the population in the geographic area(s) the entity would serve, including the following:

(i) A specific description of the geographic area or areas it intends to serve.

(ii) A specific description of how each measure evaluates providers and suppliers on quality, efficiency, effectiveness, and/or resource use.

(5) A description of the methodologies it intends to use in creating reports with respect to all of the following topics:

(i) Attribution of beneficiaries to providers and/or suppliers.

(ii) Benchmarking performance data, including the following:

(A) Methods for creating peer groups.

(B) Justification of any minimum sample size determinations made.

(C) Methods for handling statistical outliers.

(iii) Risk adjustment, where appropriate.

(iv) Payment standardization, where appropriate.

(b) Submit to CMS a description of the process it would establish to allow providers and suppliers to view reports confidentially, request data, and ask for the correction of errors before the reports are made public.

(c) Submit to CMS a prototype report and a description of its plans for making the reports available to the public.

(d) Submit to CMS information about the claims data it possesses from other sources, as defined at § 401.703(h), and documentation of adequate rights to use the other claims data for the purposes of this subpart.

(e) If requesting a 5 percent national sample to calculate benchmarks for the specific measures it is using, submit to CMS a justification for needing the file to calculate benchmarks.

**§ 401.709 The application process and requirements.**

(a) *Application deadline.* CMS accepts qualified entity applications on a rolling basis after an application is made available on the CMS Web site. CMS reviews applications in the order in which they are received.

(b) *Selection criteria.* To be approved as a qualified entity under this subpart, the applicant must meet one of the following:

(1) *Standard approval process:* Meet the eligibility and operational and governance requirements, fulfill all of the application requirements to CMS' satisfaction, and agree to pay a fee equal to the cost of CMS making the data available. The applicant and each of its contractors that are anticipated to have access to the Medicare data must also execute a Data Use Agreement with CMS, that among other things, reaffirms the statutory ban on the use of Medicare data provided to the qualified entity by CMS under this subpart for purposes other than those referenced in this subpart.

(2) *Conditional approval process:* Meet the eligibility and operational and governance requirements, and fulfill all of the application requirements to CMS' satisfaction, with the exception of possession of sufficient claims data from other sources. Meeting these requirements will result in a conditional approval as a qualified entity. Entities gaining a conditional approval as a qualified entity must meet the eligibility requirements related to claims data from other sources the entity intends to combine with the Medicare data, agree to pay a fee equal to the cost of CMS making the data available, and execute a Data Use Agreement with CMS, that among other things, reaffirms the statutory ban on the use of

Medicare data provided to the qualified entity by CMS under this subpart for purposes other than those referenced in this subpart before receiving any Medicare data. If the qualified entity is composed of lead entity with contractors, any contractors that are anticipated to have access to the Medicare data must also execute a Data Use Agreement with CMS.

(c) *Duration of approval.* CMS permits an entity to participate as a qualified entity for a period of 3 years from the date of notification of the application approval by CMS. The qualified entity must abide by all CMS regulations and instructions. If the qualified entity wishes to continue performing the tasks after the 3-year approval period, the entity may re-apply for qualified entity status following the procedures in paragraph (f) of this section.

(d) *Reporting period.* A qualified entity must produce reports on the performance of providers and suppliers at least annually, beginning in the calendar year after they are approved by CMS.

(e) *The distribution of data.*—(1) *Initial data release.* Once CMS fully approves a qualified entity under this subpart, the qualified entity must pay a fee equal to the cost of CMS making data available. After the qualified entity pays the fee, CMS will release the applicable encrypted claims data, as well as a file that crosswalks the encrypted beneficiary ID to the beneficiary name and the Medicare HICN. The data will be the most recent data available, and will be limited to the geographic spread of the qualified entity's other claims data, as determined by CMS.

(2) *Subsequent data releases.* After the first quarter of participation, CMS will provide a qualified entity with the most recent additional quarter of currently available data, as well as a table that crosswalks the encrypted beneficiary ID to the beneficiary's name and the Medicare HICN. Qualified entities are required to pay CMS a fee equal to the cost of making data available before CMS will release the most recent quarter of additional data to the qualified entity.

(f) *Re-application.* A qualified entity that is in good standing may re-apply for qualified entity status. A qualified